

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 03-0362 and 03-0395**  
**Sales and Use Tax**  
**For the Periods 2000, 2001, and 2002**

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**ISSUE**

**I. Sales Tax—Disputed Items**

**Authority:** IC 6-8.1-5-1(b).

Taxpayer protests the inclusion of particular entries.

**II. Sales Tax—Items purchased for resale**

**Authority:** IC 6-2.5-5-8(b).

Taxpayer protests the inclusion of assessment on items it claims were purchased for resale.

**III. Sales Tax—Resale to Tax-exempt purchasers**

**Authority:** IC 6-2.5-8-8; IC 6-2.5-3-7(b).

Taxpayer protests the inclusion of assessment entries on items it claims were sold to tax-exempt organizations.

**STATEMENT OF FACTS**

Taxpayers are Tech and Consulting. Because the enterprises are separate, but linked, this letter of findings includes discussion of both Tech and Consulting, so as to dispose of the issues in a unified manner.

Tech provides computer training and classroom instruction. The instructors, books, and computer supplies are provided by Consulting. The Department performed an audit of Tech and Consulting. On audit, adjustments were made to sales and use tax.

Taxpayer filed a protest and the Department held a hearing.

## **AGREED RESOLUTIONS**

Taxpayer agrees \$187.10 of use tax is due on taxable sales. See page 3 of the Consulting audit summary.

The Department agrees that ASI and Asia Source are duplicate entries. Only one should be listed. The Department will remove the Asia Source entries and evaluate the ASI entries. Taxability is another issue to be determined. See page 7 of the Consulting audit summary.

The Department agrees that the Crucial Tech amount of \$208.79 should be removed. The item was purchased, returned, and credited. See page 8 of the Consulting audit summary.

The Department agrees that LASTAR is the billing company for CTG. The listings are duplicates and need to be removed. See page 8 and 10 of the Consulting audit summary.

The Department agrees that VTech Data—reference 1-W404891—needs to be removed because the laptop was returned. See page 13 of the Consulting audit summary.

### **I. Sales Tax—Disputed Items**

## **DISCUSSION**

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b).

Taxpayer submitted documentation of duplicate entries. One entry is the invoice for the item. The other entry is the billing of the item, including shipping. Consulting paid for its items from suppliers using a credit card. The duplicate entries should be removed. The taxability of the items has to be determined.

The entry on page 10 of the Consulting audit summary: 11/22/2000 40-48426-11 Ingram Micro \$6,858.00 should be removed because the item was returned as a faulty projector.

The entries on page 10 of the Consulting audit summary: 05/02/2000 69216GB005X0S Intuit Software Supply \$131.24 and 08/12/2000 9621KH00MDPA Intuit Software Supply \$70.86 should be removed because the taxpayer provided documentation that it paid sales tax on the purchase.

The entry on page 11 of the Consulting audit summary: 12/04/2000 STMT Nova Solutions Inc \$7,563.80 should be removed because it partially duplicates 11/30/2000 49035 Nova \$14,563.80.

The entry on page 13 of the Consulting audit summary: 08/19/2000 STMT VEIT Certification \$55.00 is taxable. The fact it is an online testing service does not exclude it from sales tax. The test and grading were sold and billed as a unitary sale.

Likewise, the entry on page 13 of the Consulting audit summary: 08/21/2000 1034KVD412PW View \$2,522.00 is taxable. The fact it is an online testing service does not exclude it from sales tax. The test and grading were sold and billed as a unitary sale.

The entry on page 14 of the Consulting audit summary: 04/04/2000 11044 South Bend Chocolate Company \$980.80 should be removed because Taxpayer paid sales tax on the items when purchased. Likewise, so should the entries on page 29 of the Consulting audit summary: 06/30/2002 26002 \$151.20 and 11/20/2002 27844 \$901.80.

The entry on page 17 of the Consulting audit summary: 08/17/2001 CWH65201 ADI \$1,491.20 should be removed because Consulting returned the item.

The entries on page 17 of the Consulting audit summary for All Pro Construction should be removed because these were payments for services. It appears that any sales tax due was listed and billed.

The entry on page 17 of the Consulting audit summary: 03/06/2001 Cody Soft \$999.99 is taxable because the purchase of web hosting is a purchase of tangible personal property—a domain and associated web page code.

The entry on page 19 of the Consulting audit summary: 1/22/2001 Network Solutions \$70.00 is taxable because the purchase of a domain is the purchase of tangible personal property.

The entry on page 20 of the Consulting audit summary: 12/28/2001 Security Alarm Expense \$940.97 is taxable. Taxpayer has not provided an invoice to demonstrate what was provided and billed. Taxpayer stated that the alarm system was repaired. This does not demonstrate what was provided and under what terms; it is possible that tangible personal property was transferred to Taxpayer as part of the repair services. Absent evidence Taxpayer paid a sales tax on the entry or that the bill is for services alone, the Department upholds the assessment.

The entry on page 21 of the Consulting audit summary: 03/26/2001 S1616 SMR of Indiana, Inc \$2,210.00 should be removed. This is a partial payment on an invoice statement that cross-references with the entry on page 5 of the Tech audit summary: 01/04/2001 STMT SMR of Indiana, Inc. \$3,833.50.

The entry on page 21 of the Consulting audit summary: 02/21/2001 IWIN Tech Data \$240.00 should be removed. This is a partial payment of an order listed as the entry on page 21 of the Consulting audit summary: 02/20/2001 0495851 Tech Data \$743.00.

The entry on page 26 of the Consulting audit summary: 10/17/2002 Microsoft Online Srvs \$65.85 is not taxable because it is a service.

The entry on page 8 of the Consulting audit summary: 11/28/2000 0073926 Chief Manufacturing, Inc \$2,238.00 should be corrected. The invoice lists the total as \$563.26, not \$2,238.00.

The entry on page 8 of the Consulting audit summary: 06/06/2000 001091389 Comstor \$170.00 should be removed. A credit memo indicates Consulting returned and received a credit for items.

The entry on page 12 of the Consulting audit summary, 07/26/2000 GXML SHC\*SMARTHOUSE COM \$1,278.84 should be removed. There is no record of this amount as a charge on Taxpayer's credit card, based on the invoice statement from the credit card company.

The entry on page 17 of the Consulting audit summary: 03/03/2001 STMT CDW Computer Centers \$77.67 should be removed, because Taxpayer returned the item and credit was given on Taxpayer's credit card statement for the item.

### **FINDING**

For the reasons stated above, Taxpayer's protest is sustained and denied based upon the individual comments.

## **II. Sales Tax—Items purchased for resale**

### **DISCUSSION**

IC 6-2.5-5-8(b) provides:

Transactions involving tangible personal property . . . are exempt from state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

Taxpayer provided the Department with copies of invoices indicating the purchased items. Taxpayer submitted a file folder marked "Section 2" that lists the items Taxpayer requests be removed from the assessment because the items purchased for resale. Having read the list and inspected the invoices, the Department removes these items from the assessment.

On page 8 of the Consulting audit summary: 12/05/2000 Crucial \$1252.74 was purchased by Taxpayer for resale. Taxpayer collected sales tax on the purchase by customer.

On page 8 of the Consulting audit summary: 12/18/2000 Crucial \$208.79 was purchased by Taxpayer for resale. Taxpayer collected sales tax on the purchase by customer.

On page 9 of the Consulting audit summary: 08/08/2000 was purchased by Taxpayer for resale. Taxpayer collected sales tax on the purchase by customer. The price was discounted because the unit was damaged.

On page 11 of the Consulting audit summary: 08/18/2000 Progressive Distribution Partners [amount to be confirmed by Audit] was purchased by Taxpayer for resale. Taxpayer did charge the customer sales tax on the purchase. Audit is to confirm the amount.

On page 12 of the Consulting audit summary: 03/10/2000 V Tech Data \$252.19 was purchased by Taxpayer for resale. Taxpayer collected sales tax from the customer.

On page 13 of the Consulting audit summary: 06/28/2000 V Tech Data \$5,749.44 was purchased by Taxpayer for resale. Sales tax was collected from the customers.

On page 13 of the Consulting audit report summary: 06/29/2000 V Tech Data \$280.44 and 06/30/2000 V Tech Data \$280.44 were purchased by Taxpayer for resale. Sales tax was collected from the customer.

On page 14 of the Consulting audit report summary: 11/22/2000 We Buy It \$720 was purchased by Taxpayer for resale. Sales tax was collected from the customer.

On page 18 of the Consulting audit report summary: 1/26/2001 Ingram Micro \$995.00 was purchased by Taxpayer for resale. Sales tax was collected from the customer.

Of note, Taxpayer included other invoices and statements within the file folder marked "Section 2" that have discrepancies that do not relate to the purchased for resale argument. These discrepancies were included in the previous discussion section.

The entry on page 11 of the Consulting audit summary: 08/18/2000 136280 Progressive Distribution Partners \$41,096.50 needs to be investigated and corrected. The invoice from the distributor lists 54 computers at \$964.25 each. That totals to \$52,069.50. Taxpayer provided documentation that Taxpayer resold 26 computers. That multiplies to \$25,070.50. Taxpayer subtracted the \$25,070.50 from \$41,096.50 to arrive at \$16,025.50, as entered on the audit summary. Taxpayer seeks to have the new assessment be \$41,096.50. Taxpayer is entitled to a credit on the assessment for the 26 computers that were resold. However, audit has to confirm from what amount the Taxpayer should subtract the \$25,070.50.

The entry on page 18 of the Consulting audit summary: 05/02/2001 11193 General Commercial Corporation \$61.25 should remain on the assessment. Taxpayer states that the items were for an individual and were shipped to the company address. Taxpayer submitted a copy of the invoice with the individual's name listed—prompting suspicion as to why Taxpayer has this copy of the individual's invoice. It is likely the Taxpayer paid for the items for use in marketing and advertising.

The three SHC\*Smarthome entries on page 20 of the Consulting audit summary: 05/23/2001 STMT \$959.40; 05/24/2001 STMT \$591.20, and 05/24/2001 STMT \$1,551.89 should remain on the assessment. Taxpayer submitted documentation to demonstrate that these amounts were for items returned and credited. However, the amounts listed in the audit summary do not reconcile with the credit invoices submitted by Taxpayer.

### **FINDING**

For the reasons stated above, the Department sustains the Taxpayer's protest.

### **III.Sales Tax—Resale to Tax-exempt purchasers**

## **DISCUSSION**

IC 6-2.5-8-8 states that a purchaser who presents a sale tax exemption certificate to a merchant is exempt from the imposition of sales tax. IC 6-2.5-3-7(b) states that a merchant is not required to produce evidence that an acquisition is exempt from the sales tax, when a purchaser presents a sale tax exemption certificate.

On page 11 of the Consulting audit summary: 01/12/2000 7594QWWH66H Prep Software \$46.00 was purchased by Taxpayer and sold to an entity that had presented a tax-exempt certificate.

On page 12 of the Consulting audit summary: 07/31/2000 00073115484289 STS Web Shop \$297.00 was purchased by Taxpayer and sold to an entity that had presented a tax-exempt certificate.

On page 17 of the Consulting audit summary: 12/13/2001 W1009538 Central Computers \$149.99 was purchased by Taxpayer and sold to an entity that had presented a tax-exempt certificate.

On page 24 of the Consulting audit summary: 02/08/2002 77 Central Computers \$279.98 was purchased by Taxpayer and sold to an entity that had presented a tax-exempt certificate.

On page 25 of the Consulting audit summary entries: 10/16/2002 and 10/18/2002 ICG Computers, Inc, each listed as \$145.00, were purchased by Taxpayer and sold to an entity that had presented a tax-exempt certificate. Likewise, on page 30: 12/11/2002 1701 \$145.00.

On page 10 of the Consulting audit summary: 01/17/2000 Ingram Micro \$10,635.00 was purchased by Taxpayer for resale. Taxpayer sold the items to a tax-exempt organization, and was presented with a tax-exempt certificate. The organization was unable to pay the bill, Taxpayer donated the equipment to the organization. This became a donation. Use tax is due on the \$10,635.

On page 11 of the Consulting audit summary: 07/27/2000 Nationwide Computer \$5,725.00 was purchased by Taxpayer for resale and sold to an tax-exempt customer.

On page 12 of the Consulting audit summary: 07/31/2000 STS Webshop \$297 was purchased by Taxpayer for resale. Taxpayer sold these items to tax-exempt organizations. No tax is due.

On page 13 of the Consulting audit summary: 04/10/2000 V Tech Data \$1,168.00 was purchased for resale and sold to a tax-exempt customer.

On page 13 of the Consulting audit summary: 06/28/2000 V Tech Data \$348.12 was purchased by Taxpayer for resale and sold to a tax-exempt customer.

On page 13 of the Consulting audit summary: 06/28/2000 V Tech Data \$1,720.86 was purchased by Taxpayer for resale and sold to a tax-exempt customer.

On page 3 of the Consulting audit report summary, Taxpayer was assessed use tax on the purchase of books that were given to the students as part of the class fee. Taxpayer stated that 90% of its business is to tax-exempt organizations, most of which are governmental vocational training programs. Taxpayer submitted invoices and tax-exempt certificate to substantiate that the books were transferred to students enrolled in vocational training programs paid for by tax-exempt governmental agencies. Use tax is due on the 10% that were not transferred to students enrolled in vocational training programs paid by the agencies.

### **FINDING**

For the reasons stated above, Taxpayer's protest is sustained or denied based upon the individual comments.

AAG/JMM 052110